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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. .....

PHILL SILVER, as a taxpayer of the City of Los Angeles, and on behalf of all other taxpayers of the City of Los Angeles,

Plaintiff and Petitioner;

vs.

THE CITY OF LOS ANGELES, a municipal corporation, LOS ANGELES HARBOR OIL DEVELOPMENT COMPANY, *et al.*,

Defendants and Respondents.

Answer of Respondent the City of Los Angeles to Petition for Writ of Certiorari.

Statement of the Case.

Respondent, City of Los Angeles, pursuant to unanimous approval of its City Council, granted an oil and gas lease to Respondent, Los Angeles Harbor Oil Development Company, without advertising for bids. Neither the City Charter nor the laws of the State of California require such advertising.

Petitioner, as a taxpayer, filed a representative taxpayers' suit to set aside said lease on the grounds that

such action on the part of the City was a manifest abuse of discretion; that the mayor abused his executive discretion in signing the lease; that a better lease could have been obtained if bids had been requested, and by not so doing the Respondent City "contravened the equal protection clause of the Fourteenth Amendment"; that, the City in granting the lease committed an abuse of the discretion imposed upon a trustee, and that the lease is void because certain procedures of the Public Resources Code of the State of California were not followed.

The Supreme Court of the State of California reversed a lower court judgment which had held the lease invalid and Petitioner now seeks to review the decision of said Supreme Court.

I.

There Is No Federal Question Involved.

The decision of the Supreme Court of the State of California is based solely on state law, *i.e.*, the capacity of a taxpayer to bring a representative action to set aside a contract entered into between a municipality and a private corporation relative to lands held by a municipality in trust, in the absence of fraud, collusion, *ultra vires*, or a failure on the part of the municipality to perform a duty specifically enjoined.

This matter is of state concern only and does not involve the federal constitution in any way.

Decisions of the highest court of the state on matters of state law are generally conclusive upon the Supreme Court of the United States.

Huddleston v. Dwyer, 322 U. S. 232, 236;

Nehlett v. Carpenter, 305 U. S. 297, 302.

It is submitted that the decision of the Supreme Court of the State of California in Phill Silver, etc., v. City of Los Angeles, et al., 57 A. C. 13, is controlling upon this Court as to all matters passed upon therein.

Neblett v. Carpenter, supra.

As no federal questions are presented, the court has no jurisdiction to review the proceeding.

28 U. S. C. A. 1257(3).

II.

Petitioner Is Not One of the Class Claimed to Be Discriminated Against.

Nowhere in Petitioner's Brief does he show facts wherein he was denied equal protection of the laws or wherein there was any discrimination against him or members of the class which he claims to represent; he makes only unsupported statements that if the decision of the Supreme Court of California is allowed to stand it would be contrary to the Fourteenth Amendment (Petitioner's Br. p. 9) and that the procedures and methods used by the Respondent City in granting the lease were a violation of the equal protection clause of the Fourteenth Amendment (Petitioner's Br. p. 34).

Petitioner does not allege that any of his rights have been violated; and one who is not within the class claimed to be discriminated against can not raise such a constitutional question.

Liberty Warehouse Co. v. Burley Cooperative Assn. 276 U. S. 71, 88.

The title, right, privilege or immunity claimed by petitioner to have been discriminated must have been adverse to *him.*

Kizer v. Texarkana etc. R. Co., 179 U. S. 199.

III.

Cases Cited by Petitioner Respecting Jurisdiction of This Court Are Not Applicable to the Facts in the Case at Bar.

Petitioner states that the cases of

Fowler v. Rhode Island, 345 U. S. 67;

Niemotko v. Maryland, 340 U. S. 268, 272-273;

Ex parte Virginia, 100 U. S. 339;

Cochran v. Kansas, 316 U. S. 255 (improperly cited as p. 250);

Iowa Des Moines Bank v. Bennett, 284 U. S. 239;

Missouri v. Canada, 305 U. S. 337.

sustain the jurisdiction of this court to review the decision of the Supreme Court of California.

An examination of said cases discloses that the facts involved therein do not involve any principle remotely similar to the principle underlying the case at bar and have absolutely no application.

Conclusion.

By reason of the fact that the records show that there is no substantial federal question involved and that all of the issues decided herein are purely matters which

were properly decided by the Supreme Court of the State of California it is submitted that the petition in this case should be denied.

Respectfully submitted.

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